

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0171
Sales and Use Tax
For the Years 2001-2003

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ISSUES

I. Sales and Use Tax- Imposition

Authority: IC § 6-8.1-5-1 (b), IC § 6-2.5-2-1, IC § 6-2.5-5-8, IC § 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protests the imposition of sales tax.

Statement of Facts

The taxpayer is a corporation that manufactures bedding. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty for the tax period 2000-2002. The taxpayer protested the assessment of sales tax on several of its sales. The taxpayer contended that its sales qualified for exemption because its customers sold the bedding in retail sales. A telephone hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition

Discussion

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC 6-2.5-2-1.

Indiana grants an exemption from the sales tax at IC § 6-2.5-5-8 (b) as follows:

Transactions involving tangible personal property . . . are exempt from the state gross retail tax if the person acquiring the property acquires it for resale. .

. in the ordinary course of the person's business without changing the form of the property.

The taxpayer argued that all of its sales on which the department assessed sales tax qualified for this exemption. Indiana law provides for manufacturers to establish that its sales qualify for exemption at IC § 6-2.5-8-8 as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. . . .

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax.

After the audit, the taxpayer provided valid exemption certificates from two of the customers to whom the taxpayer sold bedding. The taxpayer's protest to these assessments is sustained.

The taxpayer also had several customers who did not provide valid exemption certificates. Therefore, the taxpayer has the burden of proving that the leases to these customers were exempt from the sales tax. The taxpayer provided substantial evidence that three of the customers were actually retail merchants reselling the bedding in their ordinary course of business. As such, sales to those merchants also qualified for exemption from the sales tax.

Finding

The taxpayer's protest to the assessment on transactions for which the taxpayer provided exemption certificates is sustained. The taxpayer's protest to the assessments on sales to the first, third, and fifth customers listed on Page 10 of the audit is also sustained. The remainder of the protest is denied.